

REMARKS

Claims 1-10 were originally filed in this application. In a preliminary amendment, dated December 7, 2001, claims 1-10 were amended and claim 11 was added. In the outstanding Office Action, the disclosure was deemed to be confusing, the drawings and specification were objected to for failing to have unit identification on the graphical representations, and claim 1 was rejected under 35 U.S.C. §101 for being directed to non-statutory subject matter. Additionally, claims 1-11 were rejected under 35 U.S.C. §112 for indefiniteness, and claims 1-11 were rejected under 35 U.S.C. §102(e) as anticipated by United States Patent No. 6,330,484 ("Qin") and United States Patent No. 4,990,346 ("Strippler"). The Applicant hereby cancels claim 1, and amends 2-6 and 8-10, thereby leaving claims 2-11 pending and at issue.

In response to page 2, paragraph 3 of the office action, wherein the specification was regarded as confusing, the Applicant encloses a substitute specification as "Attachment 1" in an effort to make the specification less confusing and in meaningful compliance with M.P.E.P. 608. No new matter has been added.

With regards to the objection of the drawings and the specification as outlined on page 3, paragraphs 4 and 5 of the office action, applicants hereby enclose substitute drawings as "Attachment 2." The units in Figs. 2-9 in which the actual wort flow 50, the desired wort flow 51, the height of the raking machine 52, the sparge water quantity 53, the sparge water flow 54, and the level 57 in the lauter vessel 19 are measured, are arbitrary and not specific units, as the addition of multiple units unnecessarily complicates the graphical representations and are unnecessary to appreciate the control method, as the relativity of the various parameters, as opposed to the quantity of the various parameters, is important. No new matter has been added. The Applicant has also canceled claim 1, thereby making the rejection of claim 1 under 35 U.S.C. §101 moot. In light of the cancellation of claim 1, the rejection of claim 1 under § 102(e) as being anticipated by Qin is also moot.

Now turning to the rejection of claims 1-11 under 35 U.S.C. §112, the Applicant amended claims 2-6 and 8-11 to better point out and distinctively claim the subject matter which applicants regard as the invention. More specifically, in claim 2, the term "further" has been eliminated, the phrase "vive-versa" has been replaced by an explicit recitation of the opposite operation, the term "desired" has been replaced by "target," the term "adjusting" has

been replaced by "setting," and the phrase "less substantial" has been replaced by "reduced." Claim 3 has been reworded to eliminate the language identified by the examiner. In claim 4, the term "desired" has been replaced by "target" and the term "approaches" has been replaced by "reaches." The terms "increasing" and "reducing," however, have not been replaced or amended as these terms convey a specific and definite meaning to one of ordinary skill in the art in the context of claim 4 and, as such, fulfill the requirements of §112, ¶2.¹ In claim 5, the term "desired" has been replaced by "target," but the term "lowering" has not been replaced or amended as this term conveys a specific and definite meaning to one of ordinary skill in the art in the context of the claim 5.² Claim 6 has been reworded to eliminate the language identified by the examiner. In claim 7, the term "deep" has not been replaced or amended as this term has a clear and precise meaning in light of the teachings of the prior art, and to those of ordinary skill in the art.³ For example, *Srippler* provides evidence that the term "deep" is used by those of ordinary skill in the art. Claims 8, 9, and 10 have been reworded to eliminate the language identified by the examiner. Lastly, in claim 11, the term "lowering" has not been replaced or amended as this term conveys a specific and definite meaning to one of ordinary skill in the art in the context of the claim 5.⁴

With regard to the anticipation rejection of claims 2-11 under 35 U.S.C. §102(e), applicants respectfully submit that *Stripler* fails to disclose each and every element of the claims and, therefore, fails to anticipate the rejected claims.⁵

Claim 2 as amended, as well as the claims dependent therefrom, specifies *inter alia*, "opening the control valve (16) and lowering the raking machine (5) if the desired wort flow is less than the actual wort flow and closing the control valve (16) and lifting the ranking machine (5) if the target wort flow is more than the actual wort flow," and "setting the target

¹ "The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. §112, second paragraph." *Seattle Box Co., v. Industrial Crating & Packaging, Inc.*, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification." See MPEP § 2173.5(b).

² See footnote 1 above.

³ The "[d]efineness of claim language must be analyzed not in a vacuum, but in light of: ... (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made." See MPEP § 2173.02.

⁴ See footnote 1 above.

⁵ "Anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention." *Rockwell International Corp. v. United States*, 47 USPQ 2d 1027 (Fed. Cir. 1998).

wort flow and the height of the raking machine (5) in dependence upon the turbidity of the outflowing wort so that an increase in turbidity will result in a lowering of the raking machine and a lower target wort flow." *Strippler* fails to disclose such elements.

Strippler discloses a method and apparatus for controlling the position of a rotating rake in a lauter tub according to a flow rate or a differential pressure relating the lauter tub, and for controlling the speed of the rotating rake in a lauter tub according to a turbidity value. More specifically, when a drop in the flow rate or an increase in the differential pressure occurs, the rake is moved to a lower position, whereas when there is an increase in the flow rate or a drop in the differential pressure, the rake is moved to a higher position. Similarly, the rotational speed of the rake may be increased or decreased in response to and depending on the turbidity. As such, the rake disclosed in *Strippler* is vertically moved dependent on the rate of flow and is reduced or increased in speed dependent on the turbidity.

Strippler, however, does not disclose controlling a control valve and a height of a raking machine in dependence upon a difference between a desired wort flow and an actual wort flow, as recited in claim 2, as amended. As a matter of fact, *Strippler* does not disclose controlling a control valve in dependence of any parameter, never mind the difference in wort flows. Additionally, *Strippler* does not disclose setting the height of the raking machine in dependence upon the turbidity but, as mentioned previously, discloses setting the rotational speed of the rake in dependence upon the turbidity.

As such, *Strippler* does not disclose all of the elements recited in claim 2, as amended. Accordingly, the § 102 rejection of claim 2 and the claims dependent thereon should be withdrawn.

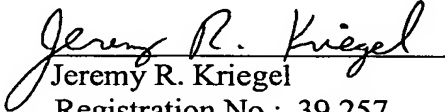
A Petition for a One-month Extension of Time and the appropriate extension fees are also enclosed herewith.

Appl. No. 10/009,924
Resp. dated July 8, 2004
Reply to Office Action of March 8, 2004

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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